



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*86 Chambers Street
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May 8, 2025

BY ECF

The Honorable Lewis J. Liman
United States District Court
Southern District of New York
500 Pearl Street, Courtroom 15C
New York, NY 10007

Re: *Metropolitan Transportation Authority, et al. v. Duffy, et al.*, No. 25 Civ. 1413
(LJL)

Dear Judge Liman:

This Office, along with the Federal Programs Branch in the Civil Division of the Department of Justice, represents defendants Sean Duffy, in his official capacity as United States Secretary of Transportation, Gloria M. Shepherd, in her official capacity as Executive Director of the Federal Highway Administration ("FHWA"), the United States Department of Transportation ("DOT"), and FHWA (together "Defendants") in the above-referenced matter.

We write respectfully in response to Plaintiffs' letter requesting that the Court strike six pages of Defendants' reply in further support of its motion to seal ECF No. 65 or grant Plaintiffs leave to file a five-page sur-reply. ECF No. 98. Defendants were in the process of filing a response to Plaintiffs' request when the Court's order was entered granting Plaintiffs leave to file a sur-reply, *see* ECF No. 99. Plaintiffs did not attempt "to confer in good faith with opposing parties" before filing their letter as Your Honor's rules require, *see* Individual Practice Rule 1.C., and, therefore, did not provide Defendants with an opportunity to inform the Court as to Defendants' position in connection with the request.

We write now to ensure that the record is clear. Plaintiffs' request entirely disregarded the fact that Defendants submitted a joint response to nearly ten pages of argument by Plaintiffs, *see* ECF No. 72 (three pages), and Intervenor-Plaintiffs Riders Alliance and Sierra Club, *see* ECF Nos. 68 (two pages) and 70 (four-and-a-half pages). Plaintiffs further ignored that Intervenor-Plaintiffs submitted their four-and-a-half page letter without seeking permission (to which Defendants did not object).¹ To limit Defendants to three pages of briefing in response to nearly ten pages of argument would have been plainly prejudicial.²

¹ Intervenor-Plaintiff New York State Department of Transportation also submitted a one-page letter in response to Defendants' motion supporting Plaintiffs' arguments. *See* ECF No. 74.

² To the extent necessary, Defendants respectfully request permission *nunc pro tunc* to submit a nine-page reply in further support of their motion to seal ECF No. 65.

Further, Plaintiffs' contention that Defendants' reply is improper because it contains "new facts and arguments" not included in its initial motion is wrong. Tellingly, Plaintiffs "letter-application . . . fails to identify any arguments that were raised for the first time in defendant[s'] reply brief, and as to which fairness demands further extending the briefing schedule." *Polidoro v. L. Firm of Jonathan D'Agostino, P.C.*, No. 19 Civ. 1290 (ER)(BCM), 2022 WL 2286951, at *8 (S.D.N.Y. June 23, 2022) (cleaned up and citation omitted). Defendants' reply directly responds to the Court's order at ECF No. 69, issued after Defendants submitted their initial motion, and the arguments set forth in Plaintiffs' and Intervenor-Plaintiffs' three responsive letters. *See id.* at *7 ("If, however . . . the reply papers merely respond to points raised in opposition to the underlying motion, fairness does not ordinarily demand further briefing." (citations omitted)).

For all of the foregoing reasons, Defendants submit that further briefing from Plaintiffs on this issue is not necessary. But given that Plaintiffs intend to submit a lengthy sur-reply, Defendants respectfully request leave to file a response to Plaintiffs' sur-reply of not more than three pages on or before May 15, 2025, at 5:00pm. As per Individual Practice Rule 1.C., we met and conferred with Plaintiffs' counsel concerning Defendants' request and Plaintiffs do not consent.³

We thank the court for its consideration of Defendants' request.

Respectfully,

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Southern District of New York

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cc: All Counsel of Record (via ECF)

³ Plaintiffs asked that we include their position in this letter: "As mentioned, Defendants have already filed 10 pages on the issue, in addition to their opening letter of 2 pages, and we do not believe an additional sur-sur-reply by Defendants is appropriate under the circumstances."